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THE AMERICAN SYSTEM OF IMPROVING AND ADMINISTERING COMMERCIAL FACILITIES

In this paper the endeavor will be to collate the legislation of the Federal and of the State Governments on the subject of commercial facilities, and to discover, if possible, the general trend of legislative activity.

The study of harbors, the connecting link between railway and ocean transportation, becomes of increasing interest and importance as foreign trade develops. Unless harbors are properly constructed and efficiently regulated foreign trade is of necessity heavily handicapped.

Previous to the adoption of the Constitution the various States regulated their commerce as so many separate nations, the Federal Government having a merely nominal suggestive power. Not only was there no uniformity in their legislation, there was bitter antagonism, States endeavoring to enact laws to cripple the commerce of other States. In the actual construction and equipment of harbor and wharf facilities, individuals were left largely to follow their own whims and desires. From such a condition of affairs there has been a steady change, first toward more activity on the part of the State Governments, and later on the part of the Federal Government.

The Constitution gives Congress the power to lay and collect taxes, duties, imposts and excises which shall be uniform throughout the United States; to regulate commerce with foreign nations, among the several States and with the Indian tribes; and likewise places the following restrictions on the States: no State shall without the consent of Congress lay any imposts or duties on imports and exports, except what may be absolutely necessary for the execution of its inspection laws; and no State shall without the consent of Congress lay any duty of tonnage. But these clauses of the Constitution, like many others, meant little until interpreted by the Supreme Court, and judicial decisions, in a series of cases from 1824 to 1884, were necessary to establish an apparent understanding between the Federal and State Governments in the regulation of rivers and harbors.

Legal Decisions Distinguishing Between Federal and State Authority.

By the Act of March 19, 1787, the Legislature of New York granted to John Fitch the sole and exclusive right of making and using every kind of boat or vessel impelled by steam on all creeks, rivers, bays and waters within the territory and jurisdiction of the State for a period of fourteen years. John Fitch, it appears, failed to exercise the extensive powers bestowed upon him, and, by a number of Acts this right was transferred to Robert R. Livingstone and Robert Fulton, changed only as to the time limit of the monopoly. By these Acts the exclusive right was given them to use steam navigation on all the waters of New York for a term of thirty years from 1808. According to the laws of New York, any steam vessel without a Livingstone and Fulton license was liable to seizure and forfeiture if found within the waters of the State. Opposed to this was a Connecticut law forbidding any vessel with such a license from entering the State, and, according to a New Jersey law, if the representatives of Livingstone and Fulton carried into effect by judicial process the provisions of the New York laws, they exposed themselves to a State action in New Jersey for all damages and treble costs.

This law of the State of New York finally came before the Supreme Court in the year 1824 in the famous *Gibbons vs. Ogden* case,¹ and the decision was the entering wedge in the separation of State and Federal authority over navigable waterways of the United States. Because of its repugnance to that clause of the Constitution giving Congress power to regulate commerce with foreign nations among the several States and with the Indian tribes, this law was declared unconstitutional, insofar as it prohibited vessels licensed according to the laws of the United States from carrying on the coasting trade, and from navigating the waters of the State of New York. In other words, no State may exclude vessels of the United States from her waters.

The next phase of the question was brought to light in the State of Maryland. In 1821 the Legislature passed a law that all importers of foreign articles or commodities of dry goods, wares or merchandise by bale or package, or wine, rum, brandy, whisky and other distilled spirituous liquors, etc., and those persons selling the same by whole-sale bale or package, hogshead, barrel or tierce should, before they

¹9 Wheaton 1.

were authorized to sell, take out a license for which they were to pay \$50. In 1827 the Supreme Court² declared this law unconstitutional, being contrary to the clause, "No State shall, without the consent of Congress, lay any imposts or duties on imports and exports;" and also to the clause, "Congress shall have power to regulate commerce * * *." That is, a tax on importers is a tax on and a regulation of commerce and, therefore, unconstitutional.

The matter of registration was the next point to come before the Supreme Court.³ In 1854 the State of Alabama passed a law requiring the owners of steamboats navigating the waters of the State, before a boat should leave the port of Mobile, to file a statement in writing in the office of the Probate Judge of Mobile County, setting forth: first, the name of the vessel; second, the name of the owner or owners; third, his or their place of residence, and, fourth, the interest each has in the vessel. This law also was declared unconstitutional insofar as it applied to a vessel which had taken out a license and was duly enrolled under the Act of Congress for carrying on the coasting trade and plied between New Orleans and the cities of Wetumpka and Montgomery in Alabama. Special State registration is an unlawful requirement of vessels engaged in coastwise trade. The case of *Foster vs. Davenport*⁴ differed from the above case in this respect only, that the vessel seized for non-compliance was engaged in lightering to and from vessels anchored in the lower bay of Mobile and the wharves of the city, and in towing vessels anchored there to and from the city, and in some instances towing the same beyond the outer bar of the bay and into the Gulf to a distance of several miles, but was duly enrolled and licensed to carry on the coasting trade while engaged in this business. The argument of the Court being that lightering or towing was but a prolongation of the voyage of the vessels assisted to their port of destination.

The next case⁵ dealt with the subject of taxation. In 1866 the State of Alabama passed a revenue law fixing the rate of taxation for property generally at one-half of one per cent., but on all the steamboats, vessels or other watercraft plying in the navigable waters of the State, the rate was placed at one dollar per ton of the regulated tonnage, to be collected if practicable at the port where such vessels

² *Brown vs. Maryland* 12, Wheaton 419.

³ *Sinnot vs. Davenport* 22, Howard 227.

⁴ 22 Howard 244.

⁵ *Cox vs. Collector* 12, Wallace 204.

were registered, otherwise at any other port of landing within the state where such vessel might be. The vessels in question were enrolled and licensed for carrying on the coastwise trade, but, as a matter of fact, plied only on waters within the State. The Supreme Court decided that although taxes levied, as on property, by a State upon vessels owned by its citizens and based on the valuation of the same, are not prohibited by the Constitution, yet taxes cannot be imposed on them by a State at so much per ton of the registered tonnage.

Vessels have long been obliged to pay pilotage whether assisted to and from the harbors by pilots or not, and in 1855 the State Legislature of Louisiana authorized the Master and Wardens of the Port of New Orleans to collect five dollars from every vessel arriving at the port, whether called upon to perform any service for the vessel or not. But in 1867 the Supreme Court⁶ pronounced the law a regulation of commerce and unconstitutional, since it was a tax levied on all ships. It was further stated that the fees of the Master and Wardens differed from that of the pilots, in that the pilot laws of the States received Federal confirmation in 1789, and also that the pilot laws rest on contract, *i.e.*, payment for actual service.

The last important case of this series was that of *Moran vs. New Orleans*.⁷ In 1870 the State authorized the city of New Orleans "to levy, impose and collect a tax upon all persons pursuing any trade, profession or calling, and to provide for its collection;" and further added that this law should not be construed to be a tax on property. Under the authority of this Act the city established the following license: "Every member of a firm or company, every agent, person or corporation owning and running towboats to and from the Gulf of Mexico, \$500." Cooper was the owner of two steam propellers, each measuring over 100 tons, duly enrolled and licensed at the port of New Orleans under the laws of the United States, to be employed in the coasting trade. Upon his refusal to pay the license judgment was obtained by the city and sustained by the Supreme Court of the State. The Supreme Court of the United States, however, decided that the license was in reality a charge made under the authority of the State for the privilege of employing vessels in the manner authorized by the license of the United States and was, therefore, a restriction of commerce and unconstitutional.

⁶ *Steamship Co. vs. Portwardens* 6, Wall 31.

⁷ 112 U. S. 69.

This chronological review of laws and court findings is necessary, in order to get some idea of the relation of the Federal and State Governments in the control of vessels plying to and from our ports. Vessels may be taxed by the State Governments, but such taxation must be based on property value and be collected at port of registration. And no vessel licensed and enrolled under the laws of the United States for carrying on the coastwise trade may be burdened by any special registration, license, fee, or tonnage tax by any State. The Constitution has been interpreted strictly, and the States are limited in their taxation of commerce to what may be absolutely necessary for the execution of their inspection laws.

Governmental Control of Pilots and Pilotage.

Pilots are largely under State control. Prior to 1789 most of the States had adopted pilot laws, and these laws were early confirmed by Congress⁸ in these words: "Until further provision is made by Congress all pilots in bays, inlets, rivers, harbors and ports shall continue to be regulated by the laws of the States wherein such pilots may be or with such laws as the States may respectfully enact for the purpose." Friction soon arose between such States as Pennsylvania and Delaware, both of which have pilots competing for service to and from ports on the Delaware River, giving opportunity to vessels to discriminate between the pilots of the two States. This led to a law of the United States requiring the master of any vessel coming into or going out of any port situated upon waters which are the boundary of two States to accept the first qualified pilot who offers his services, whether he be licensed in one State or the other. The Revised Statutes of the United States (No. 4237) prohibit any State from making any discrimination in the rate of pilotage or half pilotage between vessels sailing between ports of one State and vessels sailing between ports of different States. Revised Statutes (No. 4444) make it unlawful for a State or Municipal Government to require pilots of steam vessels to procure State or other license, in addition to that issued by the United States, or any other regulation which will impede pilots in the exercise of their duties. Except for these general regulations the control of pilots and pilotage is left to the State and Municipal Governments. Taking Philadelphia

⁸ Revised Statutes 4235.

for an illustration, one of the duties of the Board of Wardens is to license pilots and make rules for their government. There are eighty-four pilots, half of whom are licensed by the state of Pennsylvania and half by the state of Delaware. They serve in turn, first-class pilots taking vessels with draft of eighteen feet and over, and the second-class pilots taking vessels of less than eighteen feet draft. The rate of pilotage is fixed by law, twelve feet draft and less being \$1.87 per half foot; over twelve feet, \$2.25 per half foot. Pilotage is compulsory; a vessel entering the Delaware River must lie beyond breakwater for twenty-four hours, if need be, waiting for a pilot, who, when accepted, must be paid according to the rate decided upon by the State from which the pilot shall have come.

In New York harbor the number of pilots is limited to one hundred and thirty. They are incorporated, take steamers by turn, pool their earnings, and draw a salary of \$200 per month when working full time. Pilotage is not compulsory unless a pilot offers his services. The rate of pilotage on inward bound vessels drawing twenty-one feet draft and upwards is \$4.88 per foot.

At Baltimore pilotage is compulsory. There are fifty-four pilots licensed yearly by the State. The rate of pilotage on vessels of fifteen feet draft and over is \$5 per foot.

Improvement and Control of Waterways.

In the first part of the paper we endeavored to discover the relation between the Federal and State Governments in the general oversight of vessels and cargoes as they come and go in the harbors of the United States. Attention will now be directed to the relation between the Federal and the State Governments in the maintenance, improvement and control of waterways.⁹

In a general way it may be said that the Federal Government has authority over the channels of rivers between the wharf lines, and that the States have authority over the docks, wharves and other conveniences for loading and unloading cargoes. This authority is sometimes exercised directly, as in the State of Washington, where the State has made Constitutional provision for the protection of the

⁹For a study of the activity of the Federal Government in improving harbors, see article by Professor Emory R. Johnson, *Annals of the Academy of Political and Social Science*, Vol. ii, page 782-811. Professor Albert Bushnell Hart's "Essays on American Government," Chapter ix.

water front; in other States it is delegated to municipalities, and in others individual initiative is largely left unguided and uncontrolled. On the other hand, individuals, corporations and State authorities are not prohibited from improving river channels, but are subjected to the regulation of Congress, the Secretary of War and the Chief of Engineers of the Army.

Prior to the adoption of the Constitution the States exercised their sovereignty, improved waterways and levied tolls to meet their expenditures; after 1789 the lighthouses, beacons, buoys and public piers were ceded to the United States, and the care of them no longer devolved on the State Governments, thus removing the principal occasion for the collection of duties. However, the collection of tonnage duties did not cease immediately, and Congress passed frequent enabling acts empowering States to collect duties for needed improvements. If a State wished to make some river or harbor improvements she would lay her plans before Congress and if approved receive authority to collect by means of taxation of commerce sufficient funds for the completion of the enterprise. For example, in 1806 Congress passed an enabling Act to empower the Board of Wardens for the Port of Philadelphia to collect a duty of four cents per ton on all vessels clearing from the port of Philadelphia for any port or place whatsoever, to be expended in building piers and otherwise improving the navigation of the river Delaware.

Removal of Obstructions from Channels.

During the entire first half of the century there appears to have been no clear understanding as to whose duty it was to supervise the waterways of the United States and keep them in suitable condition to insure safety and rapidity to commerce. Even as late as 1859 the Legislature of the State of Pennsylvania passed an Act introduced by the following preamble which plainly indicates the uncertainty as to where the duty should rest: "Whereas frequent obstructions to the safe navigation of the river Delaware and the river Schuylkill within the tidewaters thereof do frequently occur by the sinking of canal boats, barges and other vessels and there being no adequate remedy to compel the owner, master or other agent having charge thereof to raise and remove the same." The Act authorized the Master Warden of the Port of Philadelphia immediately upon information of the sinking of any vessel in the channel of the tide-

waters of the Delaware or Schuylkill, within the limits of the port to notify the owner to raise the same within ten days under penalty, and upon failure of owner to remove the wreck the Master Warden should do so, selling the cargo to meet the expenses. In 1864 the Act was amended by authorizing the Master Warden to recover damages from the owner. Not until 1880 did Congress take action upon this subject.¹⁰ In that year the Secretary of War was authorized in case of the obstruction of any navigable waterway of the United States, river, lake, harbor or bay, to give proper notice to all persons interested in the craft or cargo to remove the same, and upon their failure to do so the Secretary of War should treat the sunken vessel as abandoned and derelict, removing and selling both vessel and cargo and depositing the proceeds in the treasury of the United States to the credit of a fund for the removal of such obstructions. This act remained unchanged for two years, but in 1882 the powers of the Secretary of War were enlarged by authorizing him to sell the vessel and cargo before raising the same. In 1890 he was further authorized¹¹ to break up and remove, without any liability for damage to the owner, any wreck or obstruction that had been allowed to remain more than two months. In section six of the same Act Congress forbids the casting from any boat pier or manufacturing establishment any ballast, gravel, cinders, sawdust or other waste into any of the navigable waters of the United States, and where the casting of such material into navigable waterways is necessary for the improvement of the same a permit from the Secretary of War must be obtained.

Construction of Bridges, Dams and Dykes.

The Federal Government, having assumed the duty of keeping the channels free from obstructions, would naturally take the next step of defining more accurately the boundaries of waterways. On March 3, 1899, Congress, in order to further protect the channels of waterways, passed an Act regulating the construction of bridges, dams and dykes, making it unlawful to construct or commence the construction of any bridge, dam, dyke or causeway over or in any port, roadstead, haven, harbor, canal, navigable river or other navigable water of the United States until the consent of Congress

¹⁰ River and Harbor Act, Section 4.

¹¹ River and Harbor Act, Sec. 8.

to the building of such structure shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers of the Army and the Secretary of War. However, such structures may be built under the authority of the legislature of a State over rivers and other waterways, the navigable portions of which lie wholly within the limits of a single State, provided the location and plans thereof are submitted to and approved by the Chief of Engineers of the Army and the Secretary of War before construction is commenced. The only difference in the building of a structure over a river wholly within a single State and one which forms the boundary between two States is that in the latter case the consent of Congress must be obtained, which is not necessary in the former, but in both instances the plans must be approved by the Chief of Engineers of the Army and Secretary of War. Plans once approved must not be deviated from in the least, either before or after completion of structure without being submitted to and receiving the approval of both the Chief of Engineers and the Secretary of War.

Section ten of the same law extended the Federal authority, making it unlawful to create any obstruction to the navigable capacity of any waters of the United States, unless affirmatively authorized by Congress; and also making it unlawful to build or commence building any wharf, pier, dolphin, boom, river breakwater bulkhead, jetty or other structure in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States outside established harbor lines, or where no harbor lines have been established, without having first received the approval before mentioned.

Harbor Lines Established by the Secretary of War.

Section eleven of the same Act authorizes the Secretary of War to establish harbor lines wherever it is made manifest to him that such lines are essential to the preservation and protection of any harbor, and beyond these lines no piers, wharves or bulkheads or other works may be extended, or deposits made except under such regulations as from time to time may be prescribed by him. He is also authorized to require any party who is given the right to build a pier or other structure to excavate, if necessary, in another part of the harbor sufficient space to compensate for the water displaced by the

structure. Prior to this date, wharf lines were located by State or local boards, and even yet are usually so located, but wherever the Secretary of War has fixed wharf lines, the local boards have made their lines correspond.

Section eighteen of the same Act authorizes the Secretary of War to compel the reconstruction of any bridge, railway or otherwise, wherever in his judgment it is deemed an obstruction of free navigation. In giving an order for reconstruction the notice must be accompanied by a plan of the change recommended by the Chief of Engineers of the Army. Failure to obey a reconstruction order is a criminal offense, and each additional month's delay is a new offense. The Secretary of War, likewise, has the power when the public welfare requires it to make all needful rules and regulations for the opening of drawbridges and such rules when so made have the force of law. The speed of vessels, the navigation of canals, the floating of logs and sack rafts, all come under his supervision.

Relation of State Governments to Wharves and Docks.

The State Governments have exercised their authority over docks, wharves and harbor lines in numerous ways and with no attempt at uniformity. In some cases the authority is exercised by State Boards with large discretionary power; in others by State Boards closely guided by statutory laws; and in others still by elective municipal boards with appointed heads or by departments under the charge of a commissioner.

The following table¹² gives the forms of wharf and dock ownership and control in the principal ports of the United States:

Portland.....	Railroad and Private		
Boston ¹³	"	"	"
New York.....	Public,	"	"
Philadelphia.....	"	"	"
Baltimore.....	Public,	"	"
Norfolk.....	"	"	"
Newport News.....	"	"	"
Savannah.....	"	"	"

¹²Massachusetts State Board on Docks and Terminal Facilities, p. 14.

¹³The South Boston public pier has been constructed since above date.

Charleston.....	Railroad and Private
New Orleans.....	Public, " "
Galveston.....	" "
San Francisco.....	Public

At *San Francisco* the docks are public, under the control of the Board of State Harbor Commissioners first appointed in 1863. This Board is composed of three persons appointed by the Governor, by and with the consent of the Senate, for a term of four years. They are given possession and control of the waterfront of the city and county of San Francisco, with powers to erect structures within a given line. The Board with the Governor and Mayor may establish rates for dockage and wharfage, collecting from each equal sums of which the total shall not exceed a small designated amount. The Board is empowered to locate and construct wharves wherever it deems best and to erect all such improvements as may be necessary for the safe landing, loading, unloading and protecting of all classes of merchandise passing in and out of the city and county of San Francisco. In the construction of wharves, no dock nor slip may be less than 136 feet at the narrowest point between the wharves. The Board has control of the mooring and anchoring of vessels in the harbor and keeping the waterways unobstructed and also the authority to extend any of the streets lying along the waterfront of the city and county to a width of 150 feet, the water side of which may be used as a landing place on which tolls are collected.

The State of Washington incorporated in her Constitution a clause prohibiting the State from selling or relinquishing any water areas beyond high-water-mark "but such areas shall be forever reserved for landings, wharves and streets and other conveniences of navigation and commerce." A Harbor Line Commission established harbor lines in the navigable tide water of the State adjacent to cities, with a view to providing for docks having a length of 600 feet and avenues fronting thereon of from 100 to 250 feet in width. By this means the water frontage of all the cities in the State is to be preserved in a uniform condition, under the control of the State, for the purpose of improving the State's commerce.

New Orleans has about thirty miles of water frontage on both sides of the river. The wharves and all riparian rights are owned and controlled by the city. Leases and licenses have, however,

been given frequently to individuals and corporations. For many years all wharfage charges were collected by the officers of the city and turned into the city treasury for the maintenance of wharves and other landings; but in 1891 a lease for a term of ten years was made of five miles of the water frontage, the lessees being allowed to collect and retain all charges paid for the use of the property. This method of control did not prove satisfactory and the commercial bodies decided that "with the keen competition of other ports and the general tendency of business to seek ports which offer the best opportunity for the cheap handling of freight, nothing short of free wharfage will relieve the situation." In 1896 a law¹⁴ was passed establishing a Board of Commissioners of the Port of New Orleans with power "to regulate the commerce and traffic of the harbor in such a manner as may in their judgment be best for its maintenance and development; to administer the public wharves; to construct new wharves where necessary; to erect sheds thereon to protect merchandise in transit; to place and keep the wharves, sheds and levees in good condition; to maintain sufficient depth of water and to provide for lighting and policing the wharves and sheds; to levy charges for defraying expenses in accordance with the schedule in the Act and to repossess themselves of the frontage farmed out under the ten year lease." The Board of Commissioners consisted of five men, resident in the city of New Orleans and appointed by the Governor of the State.

By the laws of *Maryland* the control of the harbor of Baltimore is vested in the Mayor and the City Councils who have established a Harbor Board consisting of the Mayor and six citizens, having control of all matters connected with the harbor and the expenditure of any funds appropriated therefor. The State owns two wharves, on which are warehouses wherein any citizen of Maryland who raises tobacco may store it indefinitely with no other charges than a payment of two dollars per hogshead on removal of the same. At the ends of some of the streets there are a few wharves and an enclosed dock called the city dock, all owned and controlled by the city, at which boats with garden truck and small steamboats are furnished landings. The rest of the ownership is private.

There are six harbor masters who are appointed in the same manner as other city officers and among their duties is that of the

¹⁴Act of the General Assembly of Louisiana, No. 70.

collection of wharfage and dockage rates; paying the proceeds to the city register.

New York. The docks and wharves of the City of New York are largely owned by the municipality under a grant in colonial times, and are under the control of the Commissioner of Docks. Notwithstanding this grant about half the waterfront is claimed as private property. From 1870 until 1902 the duty of maintaining and improving the harbor devolved upon the Board of Docks. Previous to the organization of the dock department in 1870 there had been no systematic plan of construction of wharves around the city, each pier owner building to suit his own fancy or convenience. During the period of thirty-two years in which the control of the harbor was vested in the Board of Docks the total gross revenue from leased wharves increased from \$315,524.54 in 1871 to \$2,673,333.30 in 1902; the revenue from ferry leases and franchises increased from \$144,640 in 1871 to \$303,406.47 in 1902; and the total annual expenditure audited increased from \$486,449.12 in 1871 to \$2,409,376.49 in 1902. Wharf property valued at \$11,692,579.71 was acquired by the city, and in addition to this a number of piers claimed by private individuals was restored to the city.

In 1890 a board of United States Engineers established a bulkhead around the island upon which the department has built several miles of masonry which is to be continued until the island is completely surrounded. Wharf construction is now systematically planned and carried out under the Commissioner of Docks, appointed by the Mayor. The wharves are leased for terms of years varying from ten years to those terminable at the pleasure of the Commissioner and at rentals of from \$50 to \$100,000 per year under one lease. Leases may be renewed for periods of ten years, but the aggregate number of years cannot exceed fifty. The Commissioner of Docks¹⁵ has exclusive charge and control, subject in certain particulars to the Commissioners of the Sinking Fund, of the wharf property belonging to the corporation of the City of New York, including wharves, piers, bulkheads and structures thereon and water adjacent thereto and all slips, basins, docks, waterfronts, land under water and structures thereon and has exclusive charge and control of repairing and building, rebuilding, maintaining,

¹⁵Laws of New York, 1902, vol. ii, chap. 609.

altering, strengthening, leasing and protecting the property. No wharf, pier, bulkhead or other structure may be erected without the plans first being approved by the Commissioners of the Sinking Fund and filed with the Commissioner of Docks. He also is authorized to regulate the charges for wharfage, crannage and lockage of all vessels admitted to the wharves, piers, bulkheads, slips, docks and basins constructed under the provisions of the law.

Boston. In 1894 a joint commission on improvement of the docks and wharves of the City of Boston found "That there is not any public department, State or municipal, having supervision of the business of the docks and wharves, of their capacity, size or of the uses made of them." The number of wharves in the city at that time was over two hundred, all private property, used for private purposes and information concerning them rested entirely upon the good-will of the proprietor. Since that time the powers of the Harbor and Land Commission have been enlarged and as stated in the laws of Massachusetts, chap. 96, sec. 7, are the general care and supervision of the harbors and tide waters within the Commonwealth, of the flats and lands flowed thereby; of the waters and banks of the Connecticut within the Commonwealth and of all structures therein in order to prevent and remove unauthorized encroachments and causes of every kind which may injure the river or interfere with the navigation of such harbors; injure their channels or cause a reduction of their tide waters. The Board is also authorized to take by purchase or otherwise, lands or materials needed for improvements or repairs; to recommend harbor lines to the general court which, if established by the court, become the lines beyond which no pier or other structure may be extended. In 1897 the Legislature¹⁸ authorized the Harbor and Land Commissioners to construct a pier and dock on the Commonwealth Flats at South Boston at an expenditure not exceeding \$400,000. This pier 1200 feet long and 400 feet wide, creating a surface of wharf area of eleven acres, has been built and is the one pier owned by the Commonwealth.

Philadelphia. Contrary to the general rule, the port of Philadelphia was more or less carefully organized from its origin. By the charter of 1701 William Penn constituted the city of Phila-

¹⁸Chap. 513, Acts of Massachusetts.

delphia to be a port or harbor for the discharging and unloading of merchandise from ships upon so many wharves and quays as the Mayor, Aldermen and Common Council of the city should from time to time establish.

The wharves of Philadelphia were of two kinds, public, such as the ends of the streets, which were for the use of the city, and private, such as were erected by the owners of the soil. In both cases the right of the riparian owner extended only to low-water mark, the privilege of erecting wharves to extend into the stream being one which the Proprietary or his successor, the State, might grant or withhold. In 1763 the Provincial Assembly, to encourage commerce and to render approach to these ports more secure, passed an Act providing for a lighthouse at the entrance of the bay and the placing of buoys in the bay and river. In 1773 provision was made for the appointment of wardens for the port of Philadelphia and for the regulation of pilots plying in the river and bay and the price of pilotage. The wardens were to choose one of their number president, examine pilots and grant certificates; make rules of pilotage; appoint the lighthouse keeper and provide for the building of more piers in which vessels might take shelter. Their accounts were laid yearly before the Accounts Committee of the Assembly.

Finally in 1803 the groundwork of the present system was adopted. The law provided for one warden and six assistant wardens, four of whom should be inhabitants of the city of Philadelphia, one of the Northern Liberties and one of the District of Southwark. The Governor was authorized to appoint a harbor master, removable at pleasure. The duties of the wardens were to grant licenses to persons to act as pilots in the bay and river Delaware and to make rules for their government while employed in that service, to decide all differences which arose between masters, owners and consignees of ships or vessels and pilots, except in certain cases; to direct the moving of ships and vessels in the harbor and the order in which they should lay, load or unload at the wharves and to make, ordain and publish such rules and regulations and with such penalties for the breach thereof in respect of the matters before mentioned as they should deem fitting and proper.

In 1851 the Legislature passed a law¹⁷ declaring that no previous law should be construed to authorize the building or extension of

¹ Pennsylvania Laws, 1851, p. 862.

wharves on the river Delaware in front of the city and county of Philadelphia or the establishment of wharf lines unless the wharf lines should first be approved by the Board of Wardens for the Port of Philadelphia.

At this time the Board consisted of the Master Warden appointed by the Governor and thirteen port wardens appointed by the Select and Common Councils and the Commissioners of the Boroughs of Bridesburg, Richmond, Kensington, the Northern Liberties, Southwark and Moyamensing.

In 1853 the jurisdiction of the Board was extended over the entire county and only wharves licensed by them were lawful structures. The Board was now made to consist of one master appointed by the Governor and sixteen assistant wardens elected by the Select and Common Councils. This Act made it the duty of Councils to fix wharf lines beyond which no wharf or pier may be built; to keep the navigable water within the city open and free from obstructions; to regulate pilots and the better disposition of vessels within the port.

An Act of March 31, 1864, made it the duty of the Board of Wardens, guided by the plan prepared by the City Surveyor, to fix the wharf lines of Delaware County beyond which they could not authorize the construction of any wharf or pier. In the same year they were given the authority to fix an arbitrary low water mark beyond which no encroachment nor improvement should be made without a license from the Board.

In 1870, owing to a decision of the Supreme Court,¹⁸ above mentioned, the Board of Port Wardens was constituted a department of the city known as "the Department of Port Wardens," all its receipts being paid into the city treasury and its accounts audited by the City Controller. Previous to this the Master Warden and Harbor Master had received a fee of seventy-five cents collected from each vessel coming into the harbor. The fee having been declared unconstitutional, the payment of the salaries was assumed by the State government.

The Board of Wardens has supervision of the port of Philadelphia under the guidance of the State and the municipal governments and operates principally through the Master Warden, and the

¹⁸*Steamship Company vs. Portwardens*, 6 Wallace 31.

Harbor Master who has charge of the placing of vessels, the cleaning of docks and wharves and other similar duties.

Summary.

In the past we have thought of harbors and transportation terminals as places where commerce was halted, now we are learning to think of them as integral parts of the great carrying systems, parts where speed and freedom of movement must be unrestricted, where discriminations and petty bickerings which result from unrestrained competition must be eliminated. While our foreign trade was comparatively small and sea-going vessels, of shallow draft, the equipment of harbors was of less importance; but with our immense and rapidly growing foreign trade, and with modern ocean vessels that draw from twenty-seven to thirty-three feet, special harbor facilities are indispensable. In 1902, 561 vessels with a loaded draft of from twenty-seven to thirty-three feet left New York harbor. In order to provide for such vessels as these, the Federal Government is deepening and improving our channel ways and giving increased power and supervision to the Secretary of War. The State and the municipal governments are centralizing the responsibilities of their Harbor Commissioners and granting specific powers, as well as general supervision. The Board of Docks in New York City has been superseded by the Commissioner of Docks. The powers of the Boston Harbor and Land Commissioners have been increased by authority to construct the South Boston pier. The New Orleans Board of Commissioners was given authority to repossess themselves of the river front, farmed out under the ten year lease and to regulate the commerce and traffic of the harbor "in such manner as may in their judgment be best;" while the harbor of San Francisco and the shore line of the State of Washington are under the direct guardianship of the State Government.

As stated earlier in the paper the Federal Government has control over the channels of rivers between wharf lines and the State Governments have control over the docks and wharves. In some States this authority is exercised through the municipalities as is the case in Maryland, Pennsylvania and New York, where the ports are controlled largely by the municipality or by a department of the municipality, but in Massachusetts, Louisiana, California and Wash-

ington the authority is exercised by State Boards appointed by the Governors. But in either case the tendency has been the same, to centralize the authority of the Board and to grant more complete discretionary powers.

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